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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of
VIRGINIA S.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Petitioner and Respondent,

v.

VIRGINIA S.,

Objector and Appellant.

D056672

(Super. Ct. No. MH104448)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy
B. Taylor, Judge. Affirmed.

I.

INTRODUCTION

Virginia S. (Virginia) appeals a judgment establishing a one-year conservatorship
of her person under the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code,

§ 5000 et seq.).¹ In November 2009, the trial court entered an order establishing a temporary conservatorship of Virginia's person, pursuant to section 5352.1. In January 2010, after a jury trial, the trial court entered a judgment establishing a one-year conservatorship of Virginia's person, pursuant to sections 5350 and 5361. On appeal, Virginia contends that the court's judgment establishing a *one-year* conservatorship should be reversed because she did not receive adequate notice of the proceedings to establish the *temporary* conservatorship. We affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 2009, the San Diego County Health and Human Services Agency (Agency) filed a petition for the appointment of a conservator and a temporary conservator over Virginia's person, pursuant to section 5350 et seq. The petition alleged that notice of the proposed appointment of a temporary conservator had been personally delivered to Virginia.

That same day, the trial court entered an order appointing the public conservator of San Diego County as the temporary conservator over Virginia's person. In its order, the court found that the Agency had provided Virginia with notice of the proposed appointment of a temporary conservator. The court also found that Virginia was "a gravely disabled person" as defined in the LPS Act (§ 5008, subd. (h)(1)(A)). The court's

¹ Unless otherwise specified, all subsequent statutory references are to the Welfare and Institutions Code.

order also specified various powers of the temporary conservator, and stated that Virginia did "not have the right to refuse mental health treatment related to [her] being gravely disabled, or to refuse placement in an institution, facility, home or environment when ordered by the temporary conservator. . . ." Finally, in its order, the court appointed the public defender to represent Virginia. On the same day that the court entered its order, the court issued letters of temporary conservatorship formalizing the appointment of the public conservator as a temporary conservator over Virginia's person.

On January 11, Virginia filed a motion to dismiss the Agency's petition to establish a one-year conservatorship.² In her motion, Virginia contended that the Agency had failed to provide her with proper notice of the hearing on the petition to establish a *temporary* conservatorship. Virginia argued, "At no time did [the Agency] give notice to the proposed conservatee there would be a court hearing, and the hearing would result in her being placed in a locked psychiatric facility under forced medication." Virginia did not challenge the Agency's provision of proper notice of the proceedings to establish the *one-year* conservatorship in her motion.

The Agency filed an opposition to Virginia's motion. In its opposition, the Agency contended that it had provided Virginia with timely and proper notice of its intent

² Virginia's motion to dismiss was ambiguous with respect to whether she sought dismissal of the temporary conservatorship or rather, the Agency's petition to establish the one-year conservatorship. However, at the hearing on the motion to dismiss, Virginia's counsel and the court treated the motion as if she were seeking dismissal of the Agency's petition to establish the one-year conservatorship, based on the Agency's failure to provide proper notice of the proceedings to establish a temporary conservatorship. Accordingly, we construe Virginia's motion to dismiss as seeking dismissal of the Agency's petition to establish the one-year conservatorship.

to seek a temporary conservatorship. The Agency attached to its opposition a proof of service indicating that the Agency had personally delivered two documents to Virginia on November 3: a document entitled "Notice of Intention to Establish Temporary Conservatorship," and a second document entitled "Notice of Conservatorship Investigation."

Also on January 11, the trial court held a hearing on Virginia's motion. At the hearing, Virginia's counsel contended that the Agency had failed to provide adequate notice of "the hearing on a temporary conservatorship," because she was never "served with a copy of the petition, and never told when the ex-parte hearing was going to be held, what department, what time, what date?"

The trial court responded, "Let's assume that I were to agree with you, that whatever notice was actually given is not the same as ex-parte notice of a hearing that will be held at a date and a time certain." The court continued, "What is the link between that and the relief that you have requested, which is dismissal of the case in its entirety?" Virginia's counsel responded, "Well, the client has a right to be heard. She had a right to be present, or her attorney, and oppose the temporary conservatorship."

The court proceeded to question the Agency's counsel with respect to the notice that the Agency provided to Virginia concerning the establishment of the temporary conservatorship. The Agency's counsel acknowledged that the documents that had been served on Virginia did not specify a date, time or location of a hearing on the Agency's

petition to establish a temporary conservatorship.³ The Agency's counsel also acknowledged that the Agency had not maintained copies of the actual documents that it had delivered to Virginia. Instead, the Agency's counsel offered "an exemplar of . . . what would have been left with [Virginia]."

The court read the exemplar of the notice to establish a temporary conservatorship into the record, as follows:

" Notice is hereby given that on or after November 9, 2009, the San Diego County Public Conservator's Office will present a petition to the San Diego County Superior Court requesting establishment of a temporary conservatorship of your person under . . . section 5350. [¶] The petition, if granted, will also appoint the San Diego County Public Defender as your attorney. If you object to the presentation of this petition or have questions, please contact Jeff Aliac, supervising attorney of the public defender's mental health unit,['] and then there is a phone number[,] [']or your private attorney.' "

After further discussion among the court and counsel concerning the sufficiency of the notice, the court denied Virginia's motion. The court reasoned in part:

"Okay. The motion to dismiss the case in its entirety . . . is denied. The basis for the denial of the motion, is, first, the motion proceeds on the . . . assumption that [Virginia] received no notice. And as demonstrated by the responsive pleading, the responsive brief, and Exhibit A thereto, and the two documents — exemplar documents that the court has reviewed and in one case read into the record, that just is not true. [¶] . . . [¶] The court finds that more than five days' notice was afforded [Virginia] in papers . . . that are more accessible, in my judgment, to the layperson than would be a copy of the

³ It is not clear from the record whether there was, in fact, a hearing on the Agency's petition to establish a temporary conservatorship. The record contains no reporter's transcript or minute order from any proceedings conducted on November 9. The order establishing the temporary conservatorship states that the Agency's petition "came before the court on 11/09/2009," and that after "examining the petition, and good cause appearing," the public conservator is appointed temporary conservator of Virginia.

petition and the summons, both of which are written, more or less, in legalese. [¶] . . . [¶] Further, the court finds that the temporary nature of the order applied for and the fact that [Virginia] was afforded counsel from November 9 to and including the present militate against outright dismissal of the action."

After the court denied Virginia's motion to dismiss, the court conducted a jury trial on the Agency's petition to establish a one-year conservatorship of Virginia's person. On January 13, the jury rendered a unanimous verdict finding Virginia to be gravely disabled due to a mental disorder. That same day, the trial court entered a judgment establishing a one-year conservatorship of Virginia's person. The court appointed the public conservator as Virginia's conservator, and stated that a "closed, locked facility" was the least restrictive level of placement "available and necessary to achieve the purpose of treatment for Virginia. . . ."

Virginia appeals from the January 13 judgment establishing the one-year conservatorship of her person.

III.

DISCUSSION

Any failure by the Agency to provide proper notice of the proceedings to establish a temporary conservatorship does not require reversal of the one-year conservatorship

Virginia claims that the Agency failed to provide her with proper notice of the proceedings to establish a temporary conservatorship. Virginia maintains that the error requires reversal of the judgment establishing the one-year conservatorship.

A. *Governing law*

1. *One-year conservatorships of the person under the LPS Act*

A trial court may appoint a conservator for any person who is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism. (§ 5350.) "Section 5350 requires, with some exceptions, that the procedures for [LPS Act] conservatorships comport with Probate Code provisions governing conservatorships." (*Conservatorship of Deidre B.* (2010) 180 Cal.App.4th 1306, 1312, fn. 6.) An LPS conservatorship automatically terminates one year after the trial court's appointment of the conservator, subject to potential reappointment of the conservator for successive one-year periods. (§ 5361.)

2. *Temporary conservatorships of the person under the LPS Act*

Section 5352.1 specifies the manner by which a trial court may establish a temporary conservatorship under the LPS Act:

"(a) The court may establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5354, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for his or her recommendation, if the court is satisfied that the comprehensive report or affidavit shows the necessity for a temporary conservatorship.

"(b) Except as provided in this section, all temporary conservatorships shall expire automatically at the conclusion of 30 days, unless prior to that date the court shall conduct a hearing on the issue of whether or not the proposed conservatee is gravely disabled as defined in subdivision (h) of Section 5008.

"(c) If the proposed conservatee demands a court or jury trial on the issue whether he or she is gravely disabled, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial, provided that the extension shall in no event exceed a period of six months."

Probate Code section 2250.2 specifies the procedures for establishing a temporary conservator under the LPS Act, and provides in relevant part:

"(a) On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file a petition for appointment of a temporary conservator of the person or estate or both.

"(b) The petition shall state facts that establish good cause for appointment of the temporary conservator. The court, upon that petition or any other showing as it may require, may appoint a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the conservator.

"(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed conservatee.

"[¶] . . . [¶]

"(f) This section shall only apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code."⁴

⁴ Additional procedures governing the establishment of temporary conservatorships under the Probate Code do not apply to the establishment of temporary conservatorships established pursuant to the LPS Act. (Prob. Code, § 2250.8 ["Sections 2250, 2250.4, and 2250.6 shall not apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code"].)

B. *Application*

Virginia contends that the Agency failed to provide her with proper notice of the proceeding to establish a temporary conservatorship, as required pursuant to Probate Code section 2250.2. Virginia also contends that the Agency's failure to provide her with adequate notice of the proceeding to establish a temporary conservatorship violated her constitutional right to due process.

Assuming strictly for purposes of this opinion that Virginia is correct,⁵ she has failed to demonstrate that either error requires reversal of the trial court's judgment establishing the *one-year* conservatorship. Virginia's complaints pertain solely to the Agency's provision of notice as to the *temporary* conservatorship. Although Virginia asserts in her brief that the "deficient notice did affect the resulting . . . permanent [one-year] conservatorship," she fails to demonstrate how this is so.

⁵ It is not clear that Probate Code section 2250.2 mandates a hearing prior to the establishment of an LPS Act temporary conservatorship. The statute does not expressly refer to a hearing, and the statute specifies only that the proposed conservatee is to receive "notice of the proposed appointment." (Prob. Code, § 2250.2.) However, we assume for purposes of this decision that Probate Code section 2250.2 provides a proposed conservatee with a right to a hearing prior to the establishment of an LPS Act temporary conservatorship. A person subject to a temporary conservatorship who is detained for intensive treatment may file a petition for habeas corpus seeking release. (See §§ 5353, 5275.)

We therefore conclude that any failure by the Agency to provide proper notice of the proceedings to establish a temporary conservatorship does not require reversal of the one-year conservatorship.⁶

⁶ While Virginia's appeal was pending, the Agency filed a motion to dismiss the appeal as moot. In its motion, the Agency contended that Virginia's appeal is moot because the temporary conservatorship had long since terminated. The Agency also argued that this court should decline to exercise its discretion to consider Virginia's contention that the Agency "routinely" provides deficient notice of temporary conservatorship proceedings because the Agency had recently modified the manner by which it provides notice of temporary conservatorship proceedings. The Agency requested that this court take judicial notice of exemplars of the forms of notice that it intends to provide in future temporary conservatorship proceedings. Virginia opposed the motion to dismiss and the request for judicial notice.

We deny the Agency's motion to dismiss. On appeal, Virginia claims that the judgment establishing the one-year conservatorship must be reversed. This claim, although meritless for the reasons stated in the text, is not moot, since there is no indication in the record that the one-year conservatorship has terminated. We also deny the Agency's request for judicial notice, and decline to consider the sufficiency of the Agency's notice of temporary conservatorship proceedings. As stated in the text, we need not determine the adequacy of the notice of temporary conservatorship proceedings in order to reject Virginia's claim that the judgment establishing the one-year conservatorship should be reversed.

IV.

DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McINTYRE, J.